

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID BENNETT,

Petitioner,

v.

JOE BIDEN,

Respondent.

No. 2:23-cv-0619 DAD AC P

ORDER

Petitioner, proceeding pro se, has filed a motion for an extension of time to file objections to the November 6, 2023 findings and recommendations. ECF No. 11. Objections are currently due by November 27, 2023. The motion also states that petitioner no longer has a copy of the petition, and requests a copy of the docket and reiterates his request for a guardian ad litem. Id. The requests for an extension of time and a copy of the docket will be granted. The court will also provide a copy of the petition as a one-time courtesy. However, the undersigned will once again deny petitioner's request for a guardian ad litem.

Federal Rule of Civil Procedure 17(c)(2) provides that "[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action." "[W]hen a substantial question exists regarding the mental competence of a party proceeding pro se, the proper procedure is for the district court to conduct a hearing to determine competence, so a guardian ad litem can be appointed, if necessary." Allen

1 v. Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005) (citing Krain v. Smallwood, 880 F.2d 1119,  
2 1121 (9th Cir. 1989)). In determining whether substantial evidence of incompetence is presented,  
3 the district court may consider sworn declarations from the pro se party or other inmates, sworn  
4 declarations or letters from treating psychiatrists or psychologists, and his medical history. Id. at  
5 1152. However, the court need not hold a competency hearing “when it is clear that a litigant has  
6 no protectable interest.” Harris v. Mangum, 863 F.3d 1133, 1138-39 (9th Cir. 2017).

7 A person’s capacity to sue is measured by the standard of the law of his domicile. Fed. R.  
8 Civ. P. 17(b)(1). Here, that means California state law. “In California, a party is incompetent if  
9 he or she lacks the capacity to understand the nature or consequences of the proceeding, or is  
10 unable to assist counsel in the preparation of the case.” Golden Gate Way, LLC v. Stewart, 2012  
11 WL 4482053, at \*2, 2012 U.S. Dist. LEXIS 140780, at \*11-12 (N.D. Cal. Sept. 28, 2012) (citing  
12 In re Jessica G., 93 Cal. App. 4th 1180, 1186 (Cal. Ct. App. 2001); Cal. Civ. Proc. Code § 372; In  
13 re Sara D., 87 Cal. App. 4th 661, 666-67 (Cal. Ct. App. 2001)). This is a very high bar for  
14 establishing incompetence.

15 Although petitioner asserts that he has been found to be incompetent to stand trial in his  
16 state court criminal proceeding and is currently being involuntarily medicated as a result, he has  
17 not provided a copy of the state court’s order deeming him incompetent or any mental health  
18 records substantiating the claim. Even assuming petitioner’s claims are true—given his current  
19 placement at Atascadero State Hospital—while the petition was largely unintelligible, petitioner’s  
20 most recent filings are coherent and clearly articulate what relief he is seeking and the grounds on  
21 which he believes he is entitled to such relief. Compare ECF No. 1 with ECF Nos. 9, 11. The  
22 motion for an extension of time also demonstrates petitioner’s understanding of the November 6,  
23 2023 findings and recommendations, the process of objecting to said findings and  
24 recommendations, and the need to request additional time. ECF No. 11. This indicates that  
25 petitioner is currently capable of understanding the proceedings and representing himself in this  
26 action. Moreover, the petition was not so incomprehensible that the court is unable to determine  
27 whether petitioner has a protectable interest that would warrant the appointment of a guardian ad  
28 litem in this case.

As set forth in the November 6, 2023 findings and recommendations, petitioner's claims are unexhausted in state court and therefore cannot proceed in federal court at this time. ECF No. 10. Appointment of a guardian ad litem would not change this fact. Moreover, because the claims are unexhausted, dismissal would be without prejudice, and petitioner would not be barred from pursuing his claims once he has exhausted them in state court, meaning there are no negative collateral consequences from having filed this petition. See Harris, 863 F.3d at 1139 (interest in not accruing strikes under 28 U.S.C. § 1915(g) could warrant appointment of guardian ad litem where guardian could avoid strike by voluntarily dismissing action). Additionally, since the proceedings are ongoing, it does not appear that there are any concerns related to the statute of limitations. The findings and recommendations similarly outline reasons why the petition should not be converted to an action under § 1983, and dismissal of the petition in this case would not prevent petitioner from bringing a separate § 1983 action to address any civil rights violations not already being addressed in Bennett v. Monroe Detention Center, No. 2:22-cv-2157 DB (E.D. Cal.). The court therefore finds that petitioner has no protectable interest in this case that would warrant the appointment of a guardian ad litem.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion for an extension of time and for copies (ECF No. 11) is GRANTED.

2. Petitioner shall have an additional thirty days, up to December 27, 2023, to file objections to the November 6, 2023 findings and recommendations.

3. The Clerk of the Court is directed to send petitioner a one-time courtesy copy of the docket and petition in this case.

4. Petitioner's motion for appointment of a guardian ad litem (ECF No. 11) is DENIED.

DATED: November 20, 2023

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE